

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

DENZEL CHANDLER,  
Petitioner,

v.

Civil No. 3:22cv123 (DJN)

HAROLD CLARKE,  
Respondent.

**MEMORANDUM OPINION**

Denzel Chandler (“Petitioner”), a Virginia prisoner proceeding *pro se*, brings this petition pursuant to 28 U.S.C. § 2254 (“§ 2254 Petition,” ECF No. 1), challenging his convictions in the Circuit Court for the City of Norfolk (“Circuit Court”). Respondent has moved to dismiss, *inter alia*, on the ground that the one-year statute of limitations governing federal habeas petitions bars the § 2254 Petition. As explained below, the Motion to Dismiss (ECF No. 12) will be GRANTED, and the § 2254 Petition (ECF No. 1) will be DENIED as untimely.<sup>1</sup>

**I. PROCEDURAL HISTORY**

Following a jury trial, Petitioner was convicted of one count of possession of a Schedule I or II controlled substance with the intent to distribute and one count of possession of a firearm while committing possession with intent to distribute. (ECF No. 14–7, at 1.) Petitioner appealed. (*Id.* at 2.) On November 14, 2019, the Supreme Court of Virginia refused Petitioner’s appeal. (*Id.*)

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<sup>1</sup> The Court corrects the capitalization, spelling and punctuation and omits emphasis and symbols in the quotations from the parties’ submissions. The Court employs the pagination assigned by the CM/ECF docketing system.

On October 19, 2020, Petitioner filed a petition for a writ of habeas corpus with the Circuit Court. (*Id.*) On February 12, 2021, the Circuit Court denied the petition for a writ of habeas corpus. (*Id.* at 36.) Petitioner did not pursue a further appeal to the Supreme Court of Virginia. (ECF No. 14, at 2.)

On March 2, 2022, this Court received Petitioner's § 2254 Petition.<sup>2</sup> The § 2254 Petition is deemed filed as of February 18, 2022.<sup>3</sup> Petitioner raises the following claims:

Claim One: The evidence was insufficient to convict Petitioner. (ECF No. 1, at 22.)

Claim Two: The prosecution violated *Brady v. Maryland*, when it failed to obtain and disclose video footage that would have exonerated Petitioner. (*Id.* at 27.)

Claim Three: Petitioner failed to receive the effective assistance of counsel.

(a) Counsel failed to object to the joinder of his trial with that of his codefendant. (*Id.* at 27–28.)

(b) Counsel failed to seek a cautionary instruction with respect to Petitioner's codefendant. (*Id.* at 29–30.)

(c) Counsel failed to seek a cautionary instruction regarding Colvard's identification of Petitioner at trial. (*Id.* at 30.)

(d) Counsel failed to provide Petitioner with a copy of discovery. (*Id.* at 32.)

(e) Counsel failed to conduct an adequate investigation. (*Id.* at 33–34.)

(f) Counsel failed to file a motion to suppress. (*Id.* at 36.)

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<sup>2</sup> At one point, Petitioner indicates that he executed his § 2254 Petition on September 9, 2021. (ECF No. 1, at 14.) However, it is clear that he did not mail the § 2254 Petition to the Court on that date.

<sup>3</sup> Petitioner does not specify when he placed his original federal habeas petition in the prison mailing system; however, the § 2254 Petition contains Petitioner's notarized signature with a date of February 18, 2022. (ECF No. 1, at 39.) The Court deems the § 2254 Petition filed as of that date. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding a *pro se* prisoner's notice of appeal was filed at the time the petitioner delivered it to prison authorities to forward to the court clerk).

## **II. ANALYSIS**

### **A. Statute of Limitations**

Section 101 of the Antiterrorism and Effective Death Penalty Act (“AEDPA”) amended 28 U.S.C. § 2244 to establish a one-year period of limitation for the filing of a petition for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court. Specifically, 28 U.S.C. § 2244(d) now reads:

- 1.** A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
  - (A)** the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B)** the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C)** the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D)** the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- 2.** The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

## **B. Commencement and Running of the Statute of Limitations**

Petitioner's judgment became final on Wednesday, February 12, 2020,<sup>4</sup> when the time to file a petition for a writ of certiorari expired. *See Hill v. Braxton*, 277 F.3d 701, 704 (4th Cir. 2002) (“[T]he one-year limitation period begins running when direct review of the state conviction is completed or when the time for seeking direct review has expired . . . .” (citing 28 U.S.C. § 2244(d)(1)(A))). The limitation ran for 249 days before Chandler filed his state habeas petition on October 19, 2020. *See* 28 U.S.C. § 2244(d)(2). The limitation period recommenced when the Circuit Court denied the petition and ran for additional 370 days before Petitioner filed his § 2254 Petition with this Court.

Consequently, the one-year statute of limitations bars Petitioner's § 2254 Petition unless Petitioner can demonstrate entitlement to a belated commencement of the limitations period or that some equitable exception allows him to avoid the statute of limitations. Neither Petitioner nor the record suggests any plausible basis for a belated commencement of the limitations period under 28 U.S.C. § 2244(d)(1)(B)–(D). Furthermore, as explained below, Petitioner fails to demonstrate entitlement to equitable tolling of the limitation period.<sup>5</sup>

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<sup>4</sup> On March 19, 2020, the Supreme Court of the United States extended the time for filing a petition for a writ of certiorari from 90 days to 150 days due to the COVID-19 pandemic. *See United States v. Spencer*, No. 22-6773, 2022 WL 17660979, at \*1 (4th Cir. Dec. 9, 2022) (citation omitted). “The Supreme Court rescinded this order on July 19, 2021 . . . .” *Id.* at \*1 n.2. Because Petitioner was required to file any petition for a writ of certiorari before March 19, 2020, this extension does not impact when his conviction became final.

<sup>5</sup> To the extent that Petitioner suggests his innocence allows the Court to ignore the statute of limitations, he fails to supplement this suggestion with the requisite evidence of his actual innocence. *Hill v. Johnson*, No. 3:09cv659, 2010 WL 5476755, at \*5 (E.D. Va. Dec. 30, 2010) (citing *Weeks v. Bowersox*, 119 F.3d 1342, 1352–53 (8th Cir. 1997); *Feaster v. Beshears*, 56 F. Supp. 2d 600, 610 (D. Md. 1999)). Therefore, the Court will not consider the issue further.

### C. Equitable Tolling

Petitions pursuant to 28 U.S.C. § 2254 are subject to equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645–46 (2010). The Supreme Court has “made clear that a ‘petitioner’ is ‘entitled to equitable tolling’ only if he shows ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Id.* at 649 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). An inmate asserting equitable tolling “bears a strong burden to show specific facts” that demonstrate he fulfills both elements of the test. *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (quoting *Brown v. Barrow*, 512 F.3d 1304, 1307 (11th Cir. 2008)). Generally, the petitioner is obliged to specify “the steps he took to diligently pursue his federal claims.” *Id.* at 930 (quoting *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998)).

Petitioner asserts that the Court should consider his § 2254 Petition timely because: (1) he was transferred to three different prisons; (2) he has a tenth-grade education and is not skilled in the law; and (3) he has to rely on other offenders for assistance, but because of his medical condition and the COVID-19 pandemic he could not be in contact with some offenders. (ECF No. 1, at 19–20.) None of these circumstances are so extraordinary as to warrant equitable tolling.

“Transfers between prison facilities, solitary confinement, lockdowns, restricted access to the law library and an inability to secure court documents do not qualify as extraordinary circumstances.” *Allen v. Johnson*, 602 F. Supp. 2d 724, 727–28 (E.D. Va. 2009) (footnote omitted) (quoting *Warren v. Kelly*, 207 F. Supp. 2d 6, 10 (E.D.N.Y. 2002)). Additionally, “even in the case of an unrepresented prisoner, ignorance of the law is not a basis for equitable tolling.” *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004) (citation omitted). Further, “[a]s a

general matter, the federal courts will apply equitable tolling because of a petitioner's mental condition only in cases of profound mental incapacity." *Id.* at 513 (citing *Grant v. McDonnell Douglas Corp.*, 163 F.3d 1136, 1138 (9th Cir. 1998)).

Additionally, Petitioner has failed to demonstrate that he exercised diligence in seeking to file his § 2254 Petition in the many months since his convictions became final. *Yang*, 525 F.3d at 928 (quoting *Brown*, 512 F.3d at 1307); *Roberts v. Watson*, 697 F. Supp. 2d 646, 653 (E.D. Va. 2010) ("Unexplained delays in filing petitions do not demonstrate diligence on the part of petitioner in pursuing his rights" (citing *Pace*, 544 U.S. at 419; *Spencer v. Sutton*, 239 F.3d 626, 630 (4th Cir. 2001))). Accordingly, Petitioner's § 2254 Petition is time-barred.

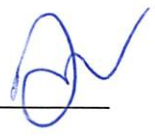
### III. CONCLUSION

For the foregoing reasons, Respondent's Motion to Dismiss (ECF No. 12) will be GRANTED. Petitioner's § 2254 Petition (ECF No. 1) will be DENIED. Petitioner's Motion for the Appointment of Counsel (ECF No. 19) will be DENIED. The action will be DISMISSED. A certificate of appealability will be DENIED.

An appropriate Final Order will accompany this Memorandum Opinion.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Petitioner and counsel of record.

Richmond, Virginia  
Dated: June 27, 2023

/s/   
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David J. Novak  
United States District Judge